(16,821.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 259.

JAMES M. SIGAFUS, PLAINTIFF IN ERROR,

vs.

DUDLEY PORTER ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 29, 1898.

1 United States Circuit Court of Appeals, Second Circuit.

Present: The Honorable E. Henry Lacombe, the Honorable Nathaniel Shipman, circuit judges.

JAMES M. SIGAFUS, Plaintiff in Error,
vs.
DUDLEY PORTER ET AL., Defendants in Error.

Certification of Questions to the Supreme Court under the Act of March 3, 1891.

This cause came before this court on November 11, 1897, upon a writ of error sued out by the defendant below to review a judgment of the U. S. circuit court, southern district of New York, in favor of the plaintiff below, defendant in error. The record is voluminous, covering some 400 printed pages of testimony and nearly 100 pages of exhibits. There are thirty-two assignments of error, all but two of which have been supported by argument in this court. As to all of these thus argued, except two, this court has reached a conclusion; but as to the questions of law arising upon those two, it desires the instruction of the Supreme Court for its proper decision.

2 *Statement of Facts.*

The action is one to recover damages for deceit by defendant inducing the purchase of a gold mine (real estate, improvements, plant, and mining rights) by the plaintiffs. There was evidence tending to show and the jury found that by false representations and fraudulent devices defendant misled plaintiffs as to the history, condition, and value of the mine; that defendant knew the falsity of such representations; that they were material; that plaintiffs relied upon them in good faith and were induced thereby to make the purchase, which they would not have made except for such false representations and fraudulent devices. There was conflicting evidence, but sufficient proof to enable the jury to determine as to what would have been the value of the mine had it been such as defendant represented it to be. There was conflicting evidence, but sufficient proof to enable the jury to determine as to what was in fact the value of the mine on the day the purchase was consummated and the property transferred. There was no conflict of evidence as to what was paid for the mine nor as to what was laid out upon it by plaintiffs after purchase in order to develope it.

Question Certified.

Upon the facts above set forth, the questions of law concerning which this court desires the instruction of the Supreme Court for its proper decision is—

"What is the proper measure of damages to be applied in
3 assessing plaintiffs' recovery? Is it—

A. The difference between the value of the property as it proved to be and as it would have been as represented; or—

B. The money plaintiffs had paid out for the mine, with interest and any other outlay legitimately attributable to defendant's fraudulent conduct, less the actual value of the mine when plaintiffs bought it?"

In accordance with the provisions of section 6 of the act of March 31, 1891, establishing courts of appeal, etc., the foregoing question of law is by the circuit court of appeals for the second circuit hereby certified to the Supreme Court.

E. HENRY LACOMBE,
Circuit Judge.
N. SHIPMAN, *Circuit Judge.*

4 UNITED STATES OF AMERICA, *Second Circuit,* } *ss.*:

I, William Parkin, clerk of the United States circuit court o appeals for the second circuit—

Do hereby certify that the foregoing certificate in the case entitled James M. Sigafus, plaintiff in error, *versus* Dudley Porter *et al.*, defendants in error, was duly filed and entered of record in my office by order of said court on the 7th day of January, 1898, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereof.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of the State of New York, this 7th day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN, *Clerk.*

5 [Endorsed:] United States circuit court of appeals, second circuit. James M. Sigafus, pl'ff in error, *vs.* Dudley Porter *et al.*, def'ts in error. Certificate of questions to Supreme Court.

Endorsed on cover: Case No. 16,821. United States circuit court of appeals, second circuit. Term No., 259. James M. Sigafus, plaintiff in error, *vs.* Dudley Porter *et al.* (Certificate.) Filed March 14, 1898.